

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA (RENO)

IN RE:	.	Case No. 20-50660-gs
	.	Chapter 7
METAL RECOVERY SOLUTIONS,	.	
INC.,	.	
	.	
Debtor.	.	
. . . . .	.	
CHRISTOPHER P. BURKE, in his	.	Adv. No. 21-05066-gs
Capacity as Chapter 7 Trustee	.	
of METAL RECOVERY SOLUTIONS,	.	
INC.,	.	
	.	
Plaintiff,	.	
	.	
v.	.	300 Booth Street
	.	Reno, NV 89509
METAL RECOVERY SOLUTIONS,	.	
INC., et al.,	.	Monday, April 17, 2023
Defendants.	.	11:02 a.m.
. . . . .	.	

TRANSCRIPT OF EVIDENTIARY HEARING RE: MOTION TO SELL CLAIMS AND  
OTHER BANKRUPTCY ESTATE ASSETS FILED BY MICHAEL LEHNERS ON  
BEHALF OF CHRISTOPHER P. BURKE [68];  
STATUS HEARING RE: ADVERSARY CASE 21-05066, COMPLAINT FILED BY  
CHRISTOPHER P. BURKE, IN HIS CAPACITY AS CHAPTER 7 TRUSTEE OF  
METAL RECOVERY SOLUTIONS, INC. VS. METAL RECOVERY SOLUTIONS,  
INC., THOMAS SEAL, JETTE SEAL, DIFFERENTIAL ENGINEERING, INC.,  
MARK SHONNARD, FEE AMOUNT 350 [1]  
BEFORE THE HONORABLE GARY SPRAKER  
UNITED STATES BANKRUPTCY COURT JUDGE

Audio Operator: Illuminada Hamill, ECR

Transcription Company: Access Transcripts, LLC  
10110 Youngwood Lane  
Fishers, IN 46048  
(855) 873-2223  
[www.accesstranscripts.com](http://www.accesstranscripts.com)

Proceedings recorded by electronic sound recording,  
transcript produced by transcription service.

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Also Present:

STEVEN GAGNON

DAVE MCMULLEN

GEORGE YOUNG, ESQ.

GARY LASS



I N D E X  
4/17/23

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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FOR ELEMENT GLOBAL INC.:

Steven Gagnon	12	14/19	--	--
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27/31

FOR THOMAS SEAL:

Thomas Seal	--	40/43	--	--
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EXHIBITS

ADMITTED

None



1 (Proceedings commence at 11:02 a.m.)

2 THE CLERK: Good morning. This is Illuminada  
3 speaking from the courtroom. We are now on record with the  
4 Honorable Gary Spraker presiding.

5 THE COURT: Thank you and good morning. This is  
6 Judge Spraker. This is Judge (indiscernible). We are on  
7 record for the eleven o'clock calendar. Only matter before the  
8 court are in Metal Recovery Solutions, Inc. and the associated  
9 adversary of Burke v. Metal Recovery Solutions, Inc. Time set  
10 for evidentiary hearing -- continued evidentiary hearing  
11 regarding motion to sell, claims, and other bankruptcy estate  
12 assets.

13 Note for the record that this matter is being  
14 conducted via the Zoom videoconference. There are no parties  
15 or counsel in the courtroom for this proceeding.

16 With that, we'll go ahead and begin by taking  
17 appearances. I'll ask Mr. Lehnerns to please lead us off.

18 MR. LEHNERS: Good morning, Your Honor. This is  
19 Michael Lehnerns appearing in Reno, Nevada by Zoom. I consent  
20 to this hearing. I represent Chapter 7 Trustee Christopher  
21 Burke.

22 THE COURT: Thank you.

23 Ms. Tirre, you're also on the top row of my panel, so  
24 I might as well have you go ahead and proceed.

25 MS. TIRRE: Good morning, Your Honor. This is Amy



1 Tirre on behalf of Element Global, Inc. and its agent, Empire  
2 Capital Management, LLC. I'm appearing from Po'ipū, Kauai.  
3 And believe my client, Mr. Steven Gagnon, he's letting me know  
4 that he is having trouble getting into the Zoom. So I'm going  
5 to try to facilitate that with his link. He says it shows up  
6 as a Teams meeting for some reason for him. So I'm going to  
7 try to get him online.

8 THE COURT: All right. Yeah. And I think we just  
9 got a notice that something started in Teams. So I think that  
10 is him trying to get in through Teams. When -- if -- do you  
11 have the invitation? Do you need it resent?

12 MS. TIRRE: I do.

13 THE COURT: Okay.

14 MS. TIRRE: And I sent it to him again this morning.  
15 So I'll try again to get him maybe to turn off Teams and, you  
16 know, open Zoom.

17 THE COURT: All right.

18 MS. TIRRE: And I think it's -- honestly, Your Honor,  
19 he would prefer dial-in, and I don't know if that's all right  
20 with you this morning, if he could just do telephonic versus  
21 video.

22 THE COURT: Let's get through the appearances. And  
23 when I -- and you know, the other parties make their  
24 appearances, if you'll advise if you consent to the telephonic  
25 participation of Mr. Gagnon or not, and we'll take it from



1 there.

2 MS. TIRRE: Thank you.

3 THE COURT: Let's go on, Ms. Ostrow?

4 MS. OSTROW: Good morning, Your Honor. Ellen Ostrow  
5 on behalf of Jex Technology. Also on the line are Dave  
6 McMullin, the CEO of Jex, and George Young, the General  
7 Counsel.

8 THE COURT: Thank you.

9 Mr. Adams?

10 MR. ADAMS: Good morning, Your Honor. Seth Adams on  
11 behalf of Differential Engineering.

12 THE COURT: Thank you.

13 Mr. Oines?

14 MR. OINES: Good morning, Your Honor. Ron Oines with  
15 Rutan and Tucker on behalf of Geo-Logic Associates, Inc. and  
16 Mr. Gary Lass is in the room with me as well, although he may  
17 not be on the screen.

18 THE COURT: All right. And Mr. Bubala, you want to  
19 enter your appearance as well?

20 MR. BUBALA: Thank you, Your Honor. Louis Bubala,  
21 co-counsel with Mr. Oines for Geo-Logic Associates,  
22 Incorporated.

23 THE COURT: Thank you. Does anyone wish to weigh in  
24 on whether Mr. Gagnon can participate telephonically versus  
25 video?



1 MR. LEHNERS: No objection, Your Honor.

2 THE COURT: All right. Hearing none, then,  
3 Ms. Tirre, I think that you can go ahead and advise Mr. Gagnon  
4 go ahead and participate by telephone by calling in through the  
5 Zoom number as well.

6 MS. TIRRE: Thank you. I will do so. Thank you.

7 THE COURT: Certainly. All right. While Ms. Tirre's  
8 undertaking that task, we'll go ahead and just begin with the  
9 particulars.

10 I have reviewed the declarations that have been  
11 submitted in support of the good faith determination. Hold on  
12 for just a moment. Apparently need to refresh my computer.  
13 All right. Here we go. And then, I did not see any objections  
14 that were filed. Obviously, these were filed on the 12th and  
15 13th of last week, Thursday and Friday -- or I guess Wednesday  
16 and Thursday. So the question I have, and I guess it's for  
17 GLA, is where are we in the good faith determination based upon  
18 the declarations?

19 MR. OINES: We would, Your Honor, like to ask some  
20 follow-up questions of the witnesses who submitted the  
21 declarations.

22 THE COURT: All right. Does any other party wish to  
23 weigh in on where we are in this process?

24 MR. LEHNERS: Your Honor, I'd like to weigh in. On  
25 Tuesday, I circulated a proposed order to everybody. And



1 Mr. Bubala got back to me. Everybody else wants to see what  
2 happens at this hearing.

3 But one of the things that came up is some semantics  
4 in the asset purchase term sheet and language I put in my  
5 order. In particular, perhaps this could be clarified. The  
6 asset purchase agreement says payment is due within five  
7 business days of the bankruptcy court entering a non-appealable  
8 order approving the agreement. And then, the Court, as  
9 Mr. Burke pointed out to me later, spent some time discussing  
10 what appealable means, the 14 days plus the 5 days equaling 19  
11 days.

12 Mr. Burke and I put in the bankruptcy court entering  
13 a final non-appealed, past-tense, order, and I don't know if  
14 that is a better syntax for it, or if it should mirror the  
15 asset purchase agreement. I think the way we have it is for  
16 clarity.

17 Mr. Bubala makes an excellent point. He's following  
18 the asset purchase term sheet. I would just like to collect  
19 input. And no, Mr. Bubala, I'm not trying to put you on the  
20 spot, I just want to make sure that this is cleared up.

21 THE COURT: All right. Do -- should we go ahead and  
22 take this matter while we're waiting for Mr. Gagnon to get on  
23 the line?

24 MR. GAGNON: I'm on the line.

25 THE COURT: All right. Thank you, Mr. Gagnon. All





1 right.

2 MR. GAGNON: My apologies for the delay, Your Honor.

3 THE COURT: Oh, no problem, not much of a delay at  
4 all.

5 Let's go ahead then and take the witnesses and get  
6 the witness -- the evidence done, and then we can deal with the  
7 mechanics of language as such as we need. And so --

8 MR. LEHNERS: Thank you, Your Honor. One other  
9 preliminary matter.

10 THE COURT: Sure.

11 MR. LEHNERS: Would the Court be interested -- since  
12 these are all declarations that everybody has read and the  
13 questions are going to be answered sequentially, is the Court  
14 at all, or are the parties interested, in invoking the  
15 exclusionary rule while each witness is -- testifies, putting  
16 everybody who will be testifying, but has not yet, in a  
17 separate Zoom hearing room? I just wanted to bring that up.

18 THE COURT: I'll start in the parties.

19 MR. OINES: Yes, Your Honor, yes, I think that's a  
20 good idea.

21 THE COURT: All right.

22 MS. OSTROW: Your Honor, just one clarification on  
23 that: To the extent that there are questions that a witness  
24 testified to something, we're not precluded from, on redirect,  
25 if we need to ask our client about something that someone said



1 for the testimony. We can have that kind of characterized out  
2 back into the record or we read that into the record.

3 THE COURT: I smile only because I think I'm having  
4 trouble keeping up with what the -- nothing should be at the  
5 prejudice of asking anyone, you know, any question that's  
6 needed to establish this. So I don't think it's an  
7 exclusionary rule as to the substance, only exclusions from  
8 listening until testimony is called.

9 MR. LEHNERS: That's what I meant, Your Honor.

10 THE COURT: Yeah.

11 MR. OINES: Your Honor, this is Mr. Oines again. If  
12 it's a technological issue from the Court or from the parties,  
13 we're okay with it. We don't want to make it overly  
14 complicated. And so if it's difficult for the Court to have  
15 parties excluded, I would withdraw my objection.

16 MR. LEHNERS: Your Honor, I'm going to defer to  
17 whatever is easier for the Court and the parties. I just  
18 thought I'd bring it up and see what everybody thought.

19 THE COURT: Easy is a relative term these days. We  
20 can open a breakout room, or we could put them in a breakout  
21 room if that is the parties' desire. You tell me. And you  
22 know, we've had a request and a withdrawal, so I need a more  
23 concrete suggestion. Either you're invoking it or not at this  
24 point.

25 MR. OINES: We're not, Your Honor.



1 THE COURT: Okay. Then, Mr. Lehnerts, you were just  
2 asking, not requesting is my understanding.

3 MR. LEHNERTS: I just wanted to bring it up and voice  
4 my concerns on the record and I will defer to counsel. I will  
5 withdraw it, because I think it's important regarding the  
6 technology itself. But there will be multiple questions asked.  
7 The answers are going to be what they are. They're pretty set.  
8 Well, with a good faith finding it's a limited question. So I  
9 think the concerns that the exclusionary rule protects is  
10 outweighed by the necessity of this court making the factual  
11 finding as to the good faith, which is linked to the  
12 technology. So on that basis, and so I'll withdraw.

13 THE COURT: The Court agrees. This is a very limited  
14 discussion. I do not anticipate getting into the substance of  
15 the technological rights and underlying patents and such. Does  
16 any other party wish to weigh in on this question or make any  
17 other comment?

18 All right, then. Then, we're at the point that  
19 Ms. Tirre, as counsel for the winning bidder, why don't you  
20 call your witness to establish a good faith as requested by the  
21 trustee and, I'm assuming, requested by your client.

22 MS. TIRRE: Oh, yes, Your Honor. I'll call Steve  
23 Gagnon to the stand.

24 THE COURT: Mr. Gagnon, you're being called to give  
25 evidence to this matter. I'm going to ask the deputy clerk to



1 swear you in to do so, please.

2 THE CLERK: Please raise your right hand.

3 STEVEN GAGNON, ELEMENT GLOBAL INC.'S WITNESS, SWORN

4 THE COURT: All right. Mr. Gagnon, you've been sworn  
5 to give testimony now. I'll turn it over to Ms. Tirre, your  
6 counsel, to lead the direct examination. Ms. Tirre?

7 THE WITNESS: Okay.

8 DIRECT EXAMINATION

9 BY MS. TIRRE:

10 Q Mr. Gagnon, would you please state your name and spell  
11 your name for the record?

12 A Steven Gagnon, that's S-T-E-V-E-N G-A-G-N-O-N.

13 THE COURT: All right. Ms. Tirre, do you want to  
14 raise the concern?

15 MS. TIRRE: I do.

16 BY MS. TIRRE:

17 Q Mr. Gagnon, the microphone and the speaker that you're  
18 using is not allowing us to hear your voice very clearly.  
19 Could you please change what you're using in order to speak  
20 into the microphone?

21 A Can you hear me now?

22 Q Yes.

23 A My name is Steven Gagnon, S-T-E-V-E-N G-A-G-N-O-N.

24 Q Thank you. And what is your role with Element Global,  
25 Inc.?



1 A I am the co-CEO and chief operating officer and the  
2 director of Element Global, Inc.

3 Q Okay.

4 THE COURT: Ms. Tirre, can I interrupt? I mean, I  
5 apologize. I should have raised this beforehand. The  
6 tentative witnesses, including Mr. Gagnon, have submitted  
7 declarations in support. I am inclined to treat that as  
8 alternative direct, subject to supplement. So are you moving  
9 the admission of the declaration of Mr. Gagnon as ECF 311?  
10 Would you like to move that?

11 MS. TIRRE: I will, Your Honor, because Mr. Gagnon --  
12 yes, as counsel for Element Global, Inc., I'd like to move  
13 Mr. Gagnon's declaration as ECF 311 into the record, and I'll  
14 just establish that that is Mr. Gagnon's signature on the  
15 declaration.

16 BY MS. TIRRE:

17 Q Then, Mr. Gagnon, do you have a copy of your declaration  
18 in front of you?

19 A Yes, I do.

20 Q Great. And when you turn to the page with your signature,  
21 will you verify for the Court that that is your signature?

22 A Yes. That's correct. That is my signature.

23 Q And that is your testimony in support of a good faith  
24 finding today on behalf of Element Global, Inc. as the  
25 successful bidder?



1 A Yes, that is correct.

2 Q Thank you.

3 MS. TIRRE: I'll pass the witness, Your Honor. Thank  
4 you.

5 THE COURT: All right. Let me ask, is there any  
6 objections to the admission of Mr. Gagnon's declaration as  
7 direct testimony?

8 UNIDENTIFIED: No.

9 UNIDENTIFIED: None.

10 MR. LEHNERS: No objection, Your Honor.

11 MR. OINES: No objection.

12 THE COURT: Hearing no objection, the Court admits  
13 the declaration as Mr. Gagnon's direct testimony. Ms. Tirre  
14 has passed the witness, so the witness is available for cross-  
15 examination. Who would like to proceed next?

16 MR. LEHNERS: I can go.

17 THE COURT: All right, Mr. Lehnerns.

18 CROSS-EXAMINATION

19 BY MR. LEHNERS:

20 Q Mr. Gagnon, can you confirm that Element Global is a  
21 publicly traded corporation?

22 A That is correct. It's a publicly traded corporation on  
23 the OTC pink sheets.

24 Q To the best of your knowledge, does anybody in Element  
25 Global have any interest in Metal Recovery Solutions or Jex



1 Technologies or Differential Engineering?

2 MS. TIRRE: Objection as to anybody. It's unclear to  
3 me what you mean, Mr. Lehnners.

4 THE COURT: And Mr. Lehnners, I believe some of this  
5 has already been addressed in the declaration itself. So if  
6 you've got something specific, probably best just to get to  
7 that.

8 MR. LEHNERS: No, I don't have anything specific.  
9 I'll rephrase.

10 BY MR. LEHNERS:

11 Q Mr. Gagnon, other than what's in your declaration, are you  
12 aware of any interests that your company may have in those  
13 three companies?

14 A No.

15 Q Other than what's in your declaration, do you have any  
16 knowledge about any relationship or business dealings with Geo-  
17 Logic, Metal Recovery Solutions, Jex, Differential, or Dr. and  
18 Mrs. Seal?

19 A No.

20 Q I believe you described -- how did you hear about the  
21 assets that were being sold last week?

22 A As in my declaration, I originally, we had -- we made two  
23 investments into Jex over the years, so we knew about this  
24 ongoing issue between the -- the situation. And on the 24th of  
25 February, I spoke to Mr. McMullin about potentially investing



1 additional capital in order to resolve this, plus other issues  
2 of business going forward. We chose not to make that  
3 investment at that time due to the uncertainty of what was  
4 taking place on the case.

5 Several weeks after that conversation, I was contacted at  
6 our office from Mr. David Richards, who's a consultant of  
7 Element Global Mining group. And he explained to us that  
8 there's a good potential here for us to come in and be a  
9 bidder, and be a successful bidder if possible, which would  
10 then put this issue to rest. And that's why we -- that's how  
11 we were found -- we were -- we were on -- found out about the  
12 whole situation.

13 Q Other than what's in your declaration, in the event that  
14 you are confirmed as the highest bidder, meaning your company,  
15 is there any agreement or arrangement that will come into being  
16 with Geo-Logic, Metal Recovery Solutions, Jex Technology,  
17 Differential Engineering, or Jette or Thom Seal as a result of  
18 your being the highest bidder?

19 A No. The only thing we -- only look for is to -- to  
20 maintain the lease situation where Jex's currently has to go  
21 forward, nothing else.

22 Q Okay. And the value that you are paying is 2.5 million.  
23 Is that correct?

24 A Yes.

25 Q All right. In the event that you are confirmed as high





1 bidder, is anybody in your company going to receive any other  
2 value, i.e. payment from a third party or an employment  
3 agreement with any asset that your company purchased?

4 A No.

5 Q Are you aware of any facts that would cause you to believe  
6 that Element took unfair advantage of other bidders either  
7 through communication prior to the bidding or other  
8 documentation?

9 A No.

10 Q Have you had a chance to read David McMullin's declaration  
11 that's ECF 313?

12 A Yes, I have.

13 Q All right. In there it says that -- well, I believe we've  
14 already disclosed that Element does own minority interest in  
15 Jex, less than .5 percent. But my question is --

16 A Yes --

17 Q -- go ahead, please.

18 A Yes, that's what we -- I came up with a different number,  
19 but we're in the same ballpark. I was based on the -- my --  
20 mine was based on the overall valuation that we put on the  
21 company.

22 Q Okay. One of the things he says is that if Element were  
23 the successful bidder, there may be future business  
24 opportunities, including an investment in Jex by Element. Are  
25 there any agreements that are firm regarding commitments for



1 future business opportunities between your company and Jex?

2 A Not at the moment, just conversations of going forward in  
3 additions to our current investment, and plus other businesses  
4 that Element has that would utilize the technology that Jex is  
5 doing.

6 Q But nothing binding.

7 A We don't have anything binding as of yet, no.

8 Q Are you aware of any facts which could objectively  
9 challenge if there had been fraud, collusion, or an intent to  
10 take unfair advantage of other bidders in this process?

11 A No.

12 Q And you do understand that the assets are being sold as  
13 is, where is, without a determination regarding the extent of  
14 the Hydro-Jex technology?

15 A Yes.

16 Q And are you familiar with the trustee's claims that have  
17 been brought in the adversary proceeding that he's filed?

18 A To a limited capacity to be quite honest with you, because  
19 we didn't do the diligence on that part. That was done by  
20 Mr. Richards.

21 Q Okay. With respect to any of the defendants, does Element  
22 have any agreement with any party of that adversary to settle  
23 the claims by virtue of Element being the highest bidder?

24 A No.

25 MR. LEHNERS: I have no further questions.



1 THE COURT: Thank you. Mr. Oines?

2 MR. OINES: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. OINES:

5 Q Mr. Gagnon, my name's Ron Oines. I represent the creditor  
6 Geo-Logic Associates. And I have just a couple of follow-up  
7 questions. And one of the items I think you were addressing a  
8 moment ago, but I just wanted to get some clarity, in  
9 Paragraph 4 of your declaration, it indicates that Element owns  
10 a minority shareholder interest in Jex Technologies, and it  
11 says it's .001 percent.

12 A Yes, sir.

13 Q And that's your -- that interest was acquired for \$90,000.  
14 Is that what your declaration is indicating?

15 A Yes, we made an investment of 40,000 on August 7th of  
16 2020, and made an additional follow-up -- addition of 50,000 in  
17 May 26th of 2021. When we calculated this during our  
18 declaration, we were understanding that the valuation currently  
19 of Jex is approximately \$90 million, so that's where we came up  
20 with the .001 percent.

21 Q Okay. Well, because if I did the math, I came out to 9  
22 billion, but maybe we're just talking about moving some --  
23 moving the decimal point. But it's your understanding that you  
24 used a valuation of 90 million. Is that correct?

25 A That's correct, 90 million.



1 Q Okay. And in Paragraph 5, you indicated that Element has  
2 agreed to invest an additional \$3 million in Jex. But I  
3 understand from the declaration, that investment has not  
4 actually been made. Has there been an agreement as to how much  
5 of the company Element will acquire for \$3 million?

6 A No, we didn't got -- we never got to that part. Again, we  
7 were in discussion. When I said we agreed to that, that was  
8 the board agreed to investing an additional 3 million into Jex  
9 regarding this transaction. But due to the uncertainty of what  
10 was going on, we didn't get into any more discussions of what  
11 the terms and conditions would be.

12 And then, as I said in my statement prior, Mr. Richards  
13 came to us approximately two weeks later and presented this  
14 opportunity to be a bidder in this process. So that's why we  
15 went down this road instead. We calculated it's much better  
16 protection for our potential invest forward.

17 Q And then, for the \$2.5 million that's been bid, I think it  
18 is your understanding that that includes the trailer that you  
19 testified to, correct?

20 A Yeah, the two trailers, some ancillary equipment, and  
21 it -- some other things, yes, correct.

22 Q What are those other things to your understanding?

23 A Some -- a pickup truck, I believe, some spare parts, a  
24 computer, and other supplies.

25 Q And are there any other assets that you believe you will



1 be acquiring for \$2.5 million other than the trailers and then  
2 these ancillary truck and equipment you just mentioned?

3 A I believe there's intangible assets which -- which  
4 includes stuff that's involved in here, but we haven't  
5 completely gone through that. But, you know, focusing on if  
6 you look at the price, what know what the cost of trailer is  
7 roughly, from what I understand, between 750 and \$900,000 a  
8 trailer. So it gets to the point of where the value is in the  
9 trailers and in the technology.

10 Q It's your understanding that these trailers are worth 750  
11 to 9,000 -- \$900,000?

12 A I was under the impression that it takes about \$750,000 to  
13 build a trailer. That's my understanding.

14 Q And it's my understanding in the lease agreement that Jex  
15 could eventually buy the -- buy both trailers and all the  
16 ancillary equipment you just mentioned for somewhere around  
17 \$750,000. Is that your understanding?

18 A No, I don't have the agreement in front of me.

19 Q Well, if in fact that's true -- well, let me ask you this:  
20 Has there been any agreement with Jex or anyone else about the  
21 trailers or the lease other than just the -- is it -- it's my  
22 understanding is that you have an agreement that you will allow  
23 the lease to continue. But has there been any agreement as to  
24 whether Jex can buy the trailers or not?

25 A We haven't discussed any of that. All we -- all -- looked



1 at -- we are doing is taking it subject to the Jex lease going  
2 forward. There has been no discussion on any purchases for  
3 this transaction.

4 Q And when you say intangible assets, do you understand that  
5 to be intellectual property related to the (indiscernible) of  
6 the Hydro-Jex process?

7 A That's how I understand it. Yes, sir.

8 Q And have you had any discussions with anyone at  
9 Differential or Jex or any discussion with Thom Seal about  
10 whether Element would be acquiring any intellectual property of  
11 the debtor?

12 MS. TIRRE: Objection. Compound. Okay, I just  
13 find -- excuse me. Objection. Compound. Jex, Differential,  
14 and Seals are different parties. So if you want to break down  
15 your questions, please.

16 THE COURT: Sustained.

17 MR. OINES: Sure.

18 BY MR. OINES:

19 Q Mr. Gagnon, have you had any discussions with anyone at  
20 Jex about whether if Element purchases of the assets of the  
21 debtor, it is acquiring any intellectual property?

22 A Not to my knowledge of that discussion. That might have  
23 happened to Mr. Richards, but not with me direct.

24 Q And you've never discussed it with Mr. Richards whether  
25 Element would be acquiring any intellectual property of the



1 debtor?

2 A I don't believe I've had that discussion with him. This  
3 is more of making sure that the assets were where they needed  
4 to be so Jex could continue to move forward. And that would  
5 help us down the road with what we're doing in our mining  
6 space, because we have very similar assets that they process.

7 Q And just to close the loop, have you had any discussions  
8 with Thom Seal about whether you -- Element would be acquiring  
9 any IP from the debtor?

10 A No.

11 Q And have you had any conversations with Differential about  
12 whether Element would be acquiring any IP from the debtor?

13 A No.

14 Q And is it correct that Empire Capital Management is also a  
15 shareholder of Jex?

16 A I believe they are. They're a -- they're a shareholder of  
17 Element Global.

18 Q Well, is Empire -- does Empire own shares in Jex other  
19 than what it might own through Element?

20 A Yes. They've -- I am sure they have invested on their own  
21 and -- Empire Capital Management has. Yes, correct. Now, I  
22 can't answer for Dave Richards what investment they've made in  
23 Jex, but I do know there was investment in there separate to  
24 what they've done in Element Global.

25 Q And do you know the amount that Empire Capital Management,



1 LLC has invested in Jex?

2 A No, I am not a part of Empire whatsoever other than  
3 they're a consultant to Element Global.

4 Q And have you -- is it your understanding that one of the  
5 assets or some of the assets that Element would acquire would  
6 be rights to litigation that's pending?

7 A I am aware of that, but I've not really drilled down on  
8 that. That's not why we got into this transaction. We got in  
9 the transaction to make sure that the lease that Jex has is  
10 intact moving forward.

11 Q And have you discussed with anyone -- other than your  
12 counsel, have you discussed with anyone what Element would do  
13 with any of the litigation that it's acquiring if it is a  
14 successful bidder?

15 A No, we haven't had that discussion.

16 Q All right. Thank you, Mr. Gagnon.

17 MR. OINES: That's all I have.

18 THE COURT: Thank you. Any other counsel wish to  
19 cross-examine Mr. Gagnon? All right.

20 Is there any, Ms. Tirre, redirect?

21 MS. TIRRE: Your Honor, I don't have redirect. If  
22 the Court has questions, but I don't have any further follow-  
23 up.

24 THE COURT: No, I do not. Thank you, Mr. Gagnon. I  
25 believe that concludes your testimony.





1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: Thank you. All right. Then we switch  
3 to --

4 MR. GAGNON: I -- I -- excuse me, Your Honor. I can  
5 now leave? You don't need me any longer, correct?

6 THE COURT: I believe you can. We'll let you know if  
7 there's a reason that you're being recalled, but I don't  
8 believe there will be. Thank you.

9 MR. GAGNON: Thank you. Thank you, sir.

10 THE COURT: All right. Now, we'll move to testimony  
11 for the Jex backup bid with Dr. Seal. Again, I'll just ask, at  
12 the onset, is there any objection to taking the declarations  
13 and the amended declaration of Dr. Seal as the direct testimony  
14 of these -- for these witnesses?

15 MR. LEHNERS: No objection, Your Honor.

16 MR. OINES: No objection, Your Honor.

17 THE COURT: All right. Hearing no objection, the  
18 Court will take the declaration and the amended declaration of  
19 Dr. Seal as evidence in support of their request for a good  
20 faith determination. Do the parties wish to cross-examine  
21 either witness, either or both?

22 MR. OINES: Yes, Your Honor.

23 MR. LEHNERS: Yes, Your Honor.

24 THE COURT: All right. Mr. Oines, Mr. Lehnerns, which  
25 order -- what order do we take the witnesses?



1 MR. LEHNERS: Your Honor, I'm willing to examine  
2 Mr. -- I believe it's McMullin. Now, I just have a few quick  
3 questions.

4 THE COURT: All right. Mr. McMullin, are you on the  
5 line? Sorry. You are. Can you hear us?

6 MR. MCMULLIN: Sorry, I was on mute, Your Honor.

7 THE COURT: All right. And you're being called.  
8 Ms. Ostrow, any objection to swearing in the witness?

9 MS. OSTROW: No, Your Honor.

10 THE COURT: All right. Mr. McMullin, you're being  
11 called as a witness in this matter. I'm going to ask the  
12 Deputy Clerk to administer the oath to allow you to give  
13 testimony.

14 Madam Clerk, would you administer the oath?

15 THE CLERK: Mr. McMullin, please raise your right  
16 hand.

17 DAVID MCMULLIN, CREDITOR'S WITNESS, SWORN

18 THE COURT: All right. Thank you. Mr. McMullin has  
19 been sworn in. Mr. Lehnars, Mr. Oines, which one are you --  
20 Ms. Ostrow, did you have anything to supplement of the  
21 declaration?

22 MS. OSTROW: No, Your Honor, just property and  
23 declaration. Thank you.

24 THE COURT: All right. The declaration is admitted.  
25 Which counsel is going to proceed with the cross-examination



1 first?

2 MR. LEHNERS: Your Honor, I can be brief. Mr. Oines  
3 may have more detailed information, but I'll defer to  
4 Mr. Oines.

5 THE COURT: We'll let you go ahead, Mr. Lehnars.

6 CROSS-EXAMINATION

7 BY MR. LEHNERS:

8 Q Mr. McMullin, other than what's in your declaration, does  
9 Jex have any interest in Metal Recovery Solutions, Element  
10 Global, Element Empire Management, or Differential Engineering?

11 A No, it does not.

12 Q Thank you. Other than what's in your affidavit, to the  
13 best of your knowledge, does anybody in your company have any  
14 relationship with, or business dealings with Metal Recovery  
15 Solutions or Differential Engineering, Empire Global, Empire  
16 Capital?

17 A Other than in -- in the declaration, no.

18 Q Okay. Now have you read the declaration of Dr. Thomas  
19 Seal?

20 A I have.

21 Q All right. He refers to a technology commercialization  
22 agreement. I believe that's on Paragraph 17K. Do you know  
23 anything about that?

24 A I do. Jex entered into that agreement with -- with  
25 Differential Engineering to further commercialize the



1 technology.

2 Q All right. Was this agreement ever finalized?

3 A Yeah, the -- the -- the commercialization of GTA was  
4 finalized.

5 Q Okay. So do you disagree with Dr. Seal's statement then  
6 that it wasn't finalized?

7 A I guess there was a component in the agreement that was  
8 not finalized, which is there's a -- there's a reference to a  
9 consulting arrangement for Dr. Seal and for his wife. Those  
10 two components were not finalized. The -- the balance of the  
11 agreement was completed.

12 Q So it's a fair statement that the majority of it was  
13 finalized?

14 A Yes, sir.

15 Q Okay. Mr. McMullin, can you tell me the difference  
16 between that agreement and the 2019 technical license agreement  
17 regarding the Hydro-Jex technology?

18 A The license agreement is sort of document name or title  
19 speaks for itself. Both of those agreements were -- were  
20 agreed to. One is a -- a document that is designed to -- to  
21 sort of commercialize technology on a go-forward basis. We  
22 would go out and -- and -- and create our business opportunity  
23 of Jex. And the other one talks more about sort of a royalty  
24 structure and -- and -- and some licensing arrangements that  
25 would -- would give us access to the technology on an exclusive



1 basis.

2 Q All right. Now, I believe of the backup bid that you  
3 have, Dr. Seal is putting in \$150,000 of his own money.

4 A Yes.

5 Q Did he tell you anything about why he did that?

6 A He didn't -- he didn't speak to me at all about why he did  
7 that. We -- we had -- when we did the auction, we had an  
8 amount that we were able to go up to that I was -- I was  
9 approved by my board. And when we -- when we were wrapping up,  
10 there had been a discussion amongst counsel about potentially  
11 seeing if there could be a joint bid.

12 Q Okay. Had any repayment terms of this been discussed at  
13 the time that the bid was made?

14 A No.

15 Q In the event that Jex is successful as the backup bidder,  
16 will Dr. Seal, any of his related companies, his wife, receive  
17 favorable value -- receive anything favorable such as  
18 employment, stock options, or any other consideration that is  
19 not part of the agreement that was bid on?

20 A No. There's -- there's nothing agreed to. No.

21 Q Okay. Are you aware of any facts that would cause you to  
22 believe that you or Dr. Seal took unfair advantage of any other  
23 bidders?

24 A No, I'm not, sir.

25 Q Are you aware of any facts where one could objectively



1 allege that there was fraud, collusion, or an attempt to  
2 grossly take unfair advantage of other bidders?

3 A No.

4 Q Okay. Okay. Now who's Mark Shonnard?

5 A Mark is my partner at Jex Technologies.

6 Q What position does he hold?

7 A He is the president and COO.

8 Q But he's employed?

9 A He is.

10 Q All right. Are you familiar with the adversary complaint  
11 filed by the trustee that included those 11 claims?

12 A I am.

13 Q All right. And are you aware of the fact that  
14 Mr. Shonnard is a defendant in that proceeding for \$14,000?

15 A I am aware, yes.

16 Q In the event that Jex acquires the backup bid, what do you  
17 plan to do with that claim?

18 A We have not -- we've not concluded what we would do with  
19 that claim, but our offer was to move our business forward.  
20 And so we would -- I think, we would act accordingly.

21 Q All right. At this time is there anything -- any  
22 agreement with Mr. Shonnard that would give him any favorable  
23 treatment should Jex be the successful backup bidder?

24 A No. No agreement.

25 Q All right. And I believe Mr. Gagnon already testified as



1 to this, but there may be future business opportunities between  
2 Element and Jex, including an investment in Jex, but nothing's  
3 been finalized to this point.

4 A Nothing has been finalized.

5 Q Okay.

6 MR. LEHNERS: I don't have any further questions.

7 Thank you.

8 THE COURT: Thank you. Mr. Oines?

9 MR. OINES: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. OINES:

12 Q Good morning, Mr. McMullin. I'm Ron Oines. I represent  
13 the creditor Geo-Logic Associates. I have just a couple more  
14 questions. In Paragraph 8 of your declaration, you talk about  
15 providing business development consulting services to  
16 Differential and MRS on a contract basis. Is that you as an  
17 individual or will you be doing that as part of Jex?

18 A Me, as an individual.

19 Q And that would be -- you were paid by -- well, let me ask  
20 you: Did Differential pay you for that consulting work?

21 A The -- the basis for that agreement was a finder's fee  
22 sort of scenario. So the -- in my declaration if you review, I  
23 had introduced them to clients in a few various states, and  
24 none of those clients effectively panned out in terms of  
25 gaining work for the use of the Hydro-Jex technology. So I was



1 not paid. There was some expenses that were paid to me.

2 Q And that was paid by Differential or by MRS, Metal  
3 Recovery Solutions?

4 A I don't recall.

5 Q And it is my understanding that under the technology  
6 license agreement and the technology commercialization  
7 agreement that I know you were just discussing with  
8 Mr. Lehnert, has Differential been paid any amounts under those  
9 agreements?

10 A Differential has been paid amounts under the -- under the  
11 agreements. I don't know, you know, an exact amount or  
12 whatever. But yes, they've been paid under the agreements,  
13 yes.

14 Q Can you estimate how much they've been paid under those  
15 agreements?

16 A Maybe -- I can't -- I can't estimate. I -- I -- I don't  
17 know what value an estimate would be.

18 Q You think it's more than \$100,000?

19 A Yes.

20 Q Do you think it's more than 200,000?

21 A I do.

22 Q Do you think it's more than 500,000?

23 A I don't think (audio interference).

24 Q Do you think it's more than 300,000?

25 A I -- that -- it's an incremental amount that is paid based





1 on the licensing arrangement. So I mean, there's  
2 some -- there's some periods of time when there was no  
3 payments.

4 Q And to be clear, these are amounts that Jex has paid  
5 Differential that are in addition to any amounts that Jex has  
6 paid to lease the trailers, correct?

7 A Maybe -- maybe ask that question differently or -- or I'm  
8 not sure I understand.

9 Q Well, Jex was a lessee under a lease for the two trailers  
10 with MRS, correct?

11 A We are a lessee for two trailers with MRS, and one trailer  
12 with Differential.

13 Q Okay. And so the -- one of the assets if -- whoever is  
14 the successful bidder here, one of the assets to be acquired is  
15 the lease along with the two leased trailers and some ancillary  
16 equipment. Is that your understanding?

17 A Yes. The MRS -- the MRS trailers, correct.

18 Q And so under that lease that we're talking about, Jex, to  
19 my understanding, has paid somewhere around \$250,000 as lease  
20 payments. Is that correct?

21 A Yeah. We paid that to the estate.

22 Q And so just to get back to my question to close the loop,  
23 the more than 200,000 that Jex has paid Differential pursuant  
24 to the technology commercialization agreement and technology  
25 license agreement, that's in addition to the roughly 250 that's



1 | been paid on the lease, correct?

2 | A Yeah. The -- the leases are standalone. You know,  
3 | there's different -- there's -- there's the PCA, there's the  
4 | PLA, which are commercial and licensing arrangements with  
5 | Differential Engineering. Then there is a subsequent lease  
6 | with Differential Engineering for one -- one trailer. And then  
7 | there was a additional lease that was at -- with MRS for the  
8 | two trailers and the ancillary equipment you referred to.

9 | Q And other than the -- you know what, let me ask you this:  
10 | Other than making payments to Differential, has Jex ever made  
11 | payments to Thom or Jetta Seal?

12 | A I think other than what is in my declaration, which is a  
13 | very limited amount of expenses, no.

14 | Q In Paragraph 11 of your declaration, you indicated that  
15 | Dr. Seal was listed as a technology officer on Jex's website,  
16 | but the title is honorary only. What does that mean, "honorary  
17 | only"?

18 | A Well, to me, that means that he's the inventor. So he's a  
19 | highly thought of industry professional, and so we wanted to  
20 | honor his efforts when we acquired the technology.

21 | Q So does Dr. Seal help Jex market the technology?

22 | A I -- I don't -- I don't know that he helps us market the  
23 | technology other than his name is on the -- his name is on the  
24 | technology. So I guess that would have some form of marketing  
25 | component.



1 Q Does Dr. Seal ever communicate with mine operators or mine  
2 owners to try and assist Jex in getting mining work?

3 A I can't speak to what -- what he has done that I'm unaware  
4 of, but he has not spoken to any of our clients.

5 Q Do you know if Mr. Seal has spoken to any potential  
6 clients, mining operators or mine owners, about the prospect of  
7 Jex getting work?

8 A I -- I -- I don't -- I don't remember a specific time that  
9 Dr. Seal has -- has spoken to a client since we have -- I  
10 can't -- I can't think of a specific time that Dr. Seal has  
11 sort of walked a client over to Jex, if maybe that's a good way  
12 to refer that. Yeah, I can't think of a specific time.

13 Q Well, like, but can you think of generally Dr. Seal  
14 communicating with mine owners or mine operators on behalf of  
15 Jex to try and help Jex get work?

16 A Again, I -- I can't speak of a -- I can't think of a -- I  
17 can't think of a time that that has happened, even generally.

18 Q And have you had any discussions with Thom Seal or Jette  
19 Seal or Mark Shonnard about what would happen to the adversary  
20 claims if Jex and Dr. Seal jointly are the successful backup  
21 bidder?

22 A I -- I have not spoken to any of the three about what  
23 the -- you know, what the next steps would be for us, for us  
24 meaning Jex.

25 Q I think a moment ago in response to Mr. Lehnert's question,



1 unless I misunderstood, he asked you specifically about  
2 Mr. Shonnard. And I think you said something to the effect of  
3 you're planning to move forward with work, and so you will  
4 respond accordingly. Do you have an understanding? Even if  
5 there's not been any agreement, do you have an understanding  
6 with Mr. Shonnard or Dr. Seal or Jette Seal about what will  
7 happen with the adversary claims if Jex and Seal are the  
8 successful bidders?

9 A To be clear -- to be clear, with our, you know, with  
10 what's included as my deposition and we -- we have not come to  
11 any arrangements or any discussions with Mr. Shonnard or  
12 Mr. Seal or -- or -- I'm sorry, Dr. Seal or his wife. There  
13 will -- I -- I guess what I was suggesting to Mr. Lehnert,  
14 there will be a time in the future where Jex would like to just  
15 move forward and move away from all this. And so we will then,  
16 I guess, come together at some point and work out how that all  
17 shakes out.

18 Q Do you have an understanding with Dr. Seal about what  
19 exactly he would be acquiring with the \$150,000 portion of the  
20 bid if you are the successful bidder?

21 A That -- that happened really at the last moment and  
22 there's no discussions around that. I -- so there's absolutely  
23 no discussions that have been -- been, I guess, happening --  
24 happening or happening about that.

25 Q And there's been some discussion and there's also



1 reference in your declaration to possible business  
2 opportunities in the future between Jex and Element. Are there  
3 any specific agreements or understandings about what type of  
4 opportunities would exist if either Element is the successful  
5 bidder or Jex and Dr. Seal are the successful bidders?

6 MS. OSTROW: Objection. Compound. You can break  
7 those up.

8 THE COURT: Go ahead and rephrase.

9 BY MR. OINES:

10 Q Have you or to your knowledge anyone else at Jex have any  
11 understandings or agreements with Element about the future  
12 relationship between Element and Jex if either Element or Jex  
13 are the successful bidder?

14 A Still not sure I understand -- I'm still not sure I -- I'm  
15 still not sure I'm clear what you're asking. So --

16 Q Well, in the declaration for example, it says,  
17 "Mr. Richards and I discussed that if Element was the  
18 successful bidder, Element would likely take the assets subject  
19 to the lease, and that there may be future business  
20 opportunities, including an investment in Jex by Element." And  
21 so I'm just asking if have there been any specific discussions  
22 about any specific business opportunities between Jex and  
23 Element?

24 A There -- there have been discussions in the past  
25 with -- with Element about making an equity investment into Jex



1 going all the way back to 2020. They have -- they've  
2 been -- they've been looking to make that investment into Jex  
3 and could not -- they could not get past the issues of  
4 that -- this particular case has presented. Therefore, only  
5 discussions that we have had have been about them making an  
6 equity investment into Jex. There has not been any discussions  
7 with Element about sort of a relationship that would develop as  
8 the basis of their purchase.

9 Q All right. Thank you, Mr. McMullin.

10 MR. OINES: That's all I have.

11 THE COURT: Thank you. Any other counsel wish to ask  
12 any questions on cross-examination of Mr. McMullin?

13 Hearing none, Ms. Ostrow, do you have any redirect?

14 MS. OSTROW: I don't think so. Thank you, Your  
15 Honor.

16 THE COURT: Thank you. All right. Thank you,  
17 Mr. McMullin. That concludes your testimony as well.

18 THE WITNESS: Thank you, Your Honor. Sorry about my  
19 dog.

20 THE COURT: It's no problem.

21 (Witness excused)

22 All right. Then that leaves us the examination of  
23 Dr. Seal. Mr. Lehnert are you still wanting to cross-examine  
24 Dr. Seal?

25 MR. LEHNERT: Yes, Your Honor, briefly.



1 THE COURT: All right. Ms. Fletcher, there you are,  
2 sorry. Let's go ahead and ask -- I'll just clarify again,  
3 there's no -- I understand there's no objection to the  
4 admission of the amended declaration of Dr. Seal as direct  
5 testimony. Is that correct?

6 MR. LEHNERS: No objection, Your Honor.

7 THE COURT: All right. Thank you. In hearing none,  
8 then the amended declaration is accepted as direct testimony.  
9 We'll go ahead and ask -- Dr. Seal, thank you for appearing on  
10 the video. Going to ask the in-court clerk to swear you in to  
11 provide cross-examination then on your declaration.

12 Madam Clerk, if you would, administer the oath.

13 THE CLERK: Mr. Seal, please raise your right hand.

14 THOM SEAL, INTERESTED PARTY, SWORN

15 THE COURT: Could you hear the clerk, Dr. Seal? A  
16 little faint.

17 MR. SEAL: Not -- not really, but in courts, I  
18 presume it's the same as we --

19 THE COURT: Well, it's important that you actually  
20 hear it though. So, Madam Clerk, I'll ask you just to speak  
21 up, please.

22 THE CLERK: Yes, sir.

23 THOMAS SEAL, INTERESTED PARTY, SWORN

24 THE COURT: All right. And thank you, sir. You have  
25 been sworn to give testimony in this matter.



1 Ms. Fletcher, do you have any additional supplement  
2 to the declaration as the direct testimony of Dr. Seal.

3 MS. FLETCHER: No, Your Honor, we don't.

4 THE COURT: All right. Mr. Lehnert, why don't we go  
5 ahead and follow the previous convention and have you ask any  
6 questions if you have any for cross-examination of Dr. Seal.

7 MR. LEHNERT: Just briefly the standard ones.

8 CROSS-EXAMINATION

9 BY MR. LEHNERT:

10 Q Good morning, Dr. Seal. How you today?

11 A Pretty good.

12 Q Thank you. Under -- if Jex were the backup bidder on  
13 this, does Jex owe you any money?

14 A Personally, no.

15 Q What?

16 A Personally, no.

17 Q Does it owe any of your companies, like Differential  
18 Engineering?

19 A Not to my knowledge.

20 Q Okay. Does Element owe you any money?

21 A Not to my knowledge.

22 Q Does Element owe your wife or any other company you have  
23 an interest in any money?

24 A No, sir.

25 Q Okay. You were present at the auction, correct?





1 A Yes.

2 Q Did you have any agreement with Geo-Logics or Differential  
3 Engineering or Empire or Empire Global regarding bidding on  
4 these assets that is dependent upon who is the successful  
5 bidder?

6 A No.

7 Q Other than the value of the assets that were purchased by  
8 Element, or possibly purchased by Jex if it is the backup  
9 bidder, do you have anyone in any company that is going to  
10 receive value, such as payment from a third party, an  
11 employment agreement, or any other asset that was not sold  
12 under the purchase agreement?

13 A Not to my knowledge.

14 Q Are you aware of any facts that would cause you to believe  
15 that either Jex Technologies or Element took unfair advantage  
16 of any other bidders?

17 A Not to my knowledge.

18 Q Are you aware of any facts that would indicate that there  
19 was fraud, collusion, or an attempt to take unfair advantage of  
20 any other bidders?

21 A Not to my knowledge.

22 Q Now, Dr. Seal, you testified or your declarations say you  
23 provide information to Jex regarding the technical aspects of  
24 the Hydro-Jex technology. Is that correct?

25 A Yes.



1 Q In the event that Jex is the successful backup bidder, is  
2 your compensation for those services going to become more  
3 favorable?

4 A Not to my knowledge.

5 Q Same question regarding Element: Will it become more  
6 favorable if Element is the successful bidder?

7 A Not to my knowledge.

8 Q Okay. Now, I have read your amended declaration.  
9 Paragraph 22 says, "There is no agreement to what assets I  
10 would receive in exchange for the \$150,000 portion of the  
11 backup bid." Do you remember that paragraph?

12 A I do remember it. I'm looking at it, and it's correct.

13 Q And you heard Mr. McMullin testify that there is no  
14 specific agreement or any deal in place to repay you the  
15 150,000 that you're willing to put up if Jex is the successful  
16 backup bidder. Is that correct?

17 A (Indiscernible).

18 Q And you stand by that. That's true according to the best  
19 of your knowledge.

20 A Correct.

21 Q Now, let's look at the flip side. Is there any detriment  
22 to you, your family, any company you have an interest in if Jex  
23 is not the backup bidder? In other words, if Element is the  
24 successful bidder, are you aware of any possible detriment you  
25 will suffer if Element instead of Jex is the backup bidder?



1 A Not to my knowledge.

2 Q And that will include any potential deals or treatment  
3 under the adversary complaint and claims against you and your  
4 family that the trustee has filed.

5 A Not to my knowledge.

6 MR. LEHNERS: I have no further questions.

7 THE COURT: Thank you. Mr. Oines?

8 MR. OINES: Thank you.

9 CROSS-EXAMINATION

10 BY MR. OINES:

11 Q Dr. Seal, it's my understanding based on Mr. McMullin's  
12 testimony a moment ago that at least to the best of his  
13 recollection Jex has paid Differential over \$200,000 pursuant  
14 to the technology license agreement and technology  
15 commercialization agreement. Is that your understanding? I'm  
16 sorry. Is that a yes? We didn't hear you. I think you're --

17 MR. OINES: I'm not hearing him. Is anyone else  
18 hearing him?

19 MS. FLETCHER: No.

20 THE COURT: Did he have his own -- Dr. Seal, did you  
21 hear the question?

22 THE WITNESS: Yes.

23 MS. FLETCHER: Oh, there he is.

24 THE COURT: All right. We didn't hear your response  
25 to the question then.



1 THE WITNESS: I answered yes. It appears everything  
2 is good on my end as far as the Zoom. I apologize. I'm  
3 unaware of why. Can you hear me okay now, sir?

4 THE COURT: We can. I'm just going to reset the  
5 matter for the record so it doesn't get too confusing.  
6 Mr. Oines, why don't you restart the question again from the  
7 top and see if we can a better transmission.

8 MR. OINES: Sure, thank you.

9 BY MR. OINES:

10 Q Dr. Seal, my understanding there is a technology licensing  
11 agreement and a technology commercialization agreement between  
12 Differential and Jex. And according to Mr. McMullin's  
13 testimony a moment ago, it was his best estimate that Jex has  
14 paid Differential over \$200,000 pursuant to those agreements.  
15 Is that consistent with your understanding?

16 A Yes. Could you hear that (indiscernible)?

17 Q Yes. Thank you. Can you be any more specific? Do you  
18 know actually how much Jex had paid Differential under those  
19 two agreements?

20 A No, I don't recall.

21 Q Okay. And in your declaration, you had mentioned a  
22 separate consulting agreement that apparently was contemplated,  
23 but never actually finalized. Is that correct?

24 A Yes, that is correct.

25 Q Has there been any discussion with Jex about whether that



1 consulting agreement would be finalized if Jex or if Element  
2 were to be the successful bidder here?

3 A Not to my knowledge.

4 Q And do you -- I understand you're the chief technology  
5 officer of Jex, correct?

6 A Honorary, yes.

7 Q Okay. And what does that mean to you, honorary?

8 A Well, my name is associated with the technology (audio  
9 interference) publication on the technology. And it's a  
10 trademark on the technology. And I'm the inventor of several  
11 patents on the technology.

12 Q Okay. And do you ever -- or have you ever attempted to  
13 help Jex market the Hydro-Jex technology by speaking with  
14 prospective mine owners or operators?

15 A I have answered questions regarding the technology.

16 Q Questions from the mine owner or operator?

17 A Mine owner, operator, various different engineers that I  
18 contact in my professional career.

19 Q And do you ever -- with those mine owners or operators,  
20 have you discussed Differential's patents?

21 A Yes.

22 Q And what have you said about Differential's patents to the  
23 mine owners and operators?

24 A (Indiscernible) --

25 MR. ADAMS: Your Honor, objection.



1 THE COURT: Objection, Mr. Adams?

2 MR. ADAMS: Your Honor, Differential is not a  
3 co-bidder, and so to the extent that we're getting into a  
4 discussion regarding Differential's patents with third parties,  
5 I'm not sure it bares any relevance on the proceeding today.

6 THE COURT: Mr. Oines, response?

7 MR. OINES: Sure. Well, first of all, Differential  
8 definitely is Dr. Seal. He's the only employee of the company  
9 and is the owner and operator of the company. But also, I  
10 believe we're entitled to explore Dr. Seal's and Differential's  
11 relationship with Jex because the -- you know, the purpose of  
12 this other than just trying to understand the relationship and  
13 what exactly Dr. Seal does as an honorary chief technology  
14 officer.

15 THE COURT: Let's sustain the objection. I think  
16 we've gotten that point. He's indicated it's honorary. He  
17 answers questions about the technology to the extent that you  
18 wish to understand that. But as of further, you can be more  
19 direct about that. But this isn't a deposition. So I mean,  
20 we're here on a very limited question on good faith. The Court  
21 will sustain the objection.

22 MR. OINES: Okay. Thank you, Your Honor.

23 BY MR. OINES:

24 Q Can I just ask: Dr. Seal, other than your role of chief  
25 technology officer, do you have any other duties and



1 responsibilities as an individual with Jex?

2 A Not to my knowledge.

3 Q And have you been promised any additional roles in the  
4 event that Jex or Element are the successful bidders here?

5 A Not to my knowledge.

6 Q And have you had any discussion with anyone about -- other  
7 than your attorneys -- any discussion with anyone about what  
8 would happen with the adversary proceeding that's pending or  
9 any other litigation involving MRS in the event that Jex or  
10 Element are the successful bidders here?

11 A No.

12 Q All right. That's all I have. Thank you.

13 THE COURT: Thank you. Any other counsel wish to  
14 make any cross-examination of Dr. Seal?

15 All right, hearing none, any redirect, Ms. Fletcher?

16 MS. FLETCHER: No, Your Honor.

17 THE COURT: All right. Thank you, Dr. Seal. That  
18 concludes your testimony.

19 (Witness excused)

20 THE COURT: All right. Are there any other witnesses  
21 that any party wishes to bring forward for examination on the  
22 question of good faith of either purchaser or the backup  
23 purchaser?

24 All right. In hearing no further evidence, the  
25 evidence is closed. Let's get to the main question then. Is



1 | there an objection to the finding of good faith?

2 | MR. OINES: Your Honor, could we have five minutes to  
3 | confer?

4 | THE COURT: Sure we could do it. Let's take a five-  
5 | minutes recess. We'll go off record. Please let the deputy  
6 | clerk know when you're ready to go back on record. Thank you.

7 | MR. OINES: Thank you.

8 | (Recess taken at 12:10 p.m.)

9 | (Proceedings resumed at 12:19 p.m.)

10 | THE CLERK: Good afternoon. This is Illuminada  
11 | speaking from the courtroom. We are back on record.

12 | THE COURT: Thank you very much. We're back in on  
13 | record in the Metal Recovery main case and the Burke v. Metal  
14 | Recovery adversary.

15 | All right. We've concluded the evidence on the issue  
16 | of good faith under 363(m).

17 | Mr. Oines, where do we stand as to any objections?

18 | MR. OINES: Your Honor, if Mr. Burke and Mr. Lehnars  
19 | are satisfied and if Your Honor is satisfied, then Geo-Logic  
20 | does not have an objection.

21 | THE COURT: Thank you. Mr. Lehnars?

22 | MR. LEHNARS: Your Honor, I have reviewed the case  
23 | law on this, and in order to have a good faith finding, there  
24 | has to be a good faith purchaser value consideration. The  
25 | auction gives us value. And what they're looking for is lack





1 of good faith that shows, like, fraud, collusion between the  
2 purchaser and other bidders, or any attempt to gross -- take  
3 grossly unfair advantage of the others. That's how I've drawn  
4 my questions. I've gotten answers under oath as to all of  
5 those. There's no indication of that. I believe that prima  
6 facie showing for 363(m) of good faith has been made. The  
7 record -- the case I'm relying on is In re Suchy, S-U-C-H-Y,  
8 750 F.2d 900 (9th Cir. 1985).

9 THE COURT: All right. Does any other party counsel  
10 wish to weigh in on the ultimate question of good faith for  
11 either the winning bid or the backup bid?

12 All right. Hearing no objection, Mr. Oines, then, I  
13 am taking you up on your statement to follow up, that since the  
14 trustee is not objecting to any determination of good faith,  
15 that there is no objection from GLA.

16 MR. OINES: Correct.

17 THE COURT: All right. Then, based upon there's no  
18 objection, the Court has listened to the witness statements as  
19 previously reviewed prior to commencement of the hearing, the  
20 declarations that had formed the direct testimony of the  
21 witnesses. While I understand the concern, indeed, that was  
22 part of the reason why the Court was unwilling to just simply  
23 accept or make a determination of good faith at the conclusion  
24 of the auction. There has been sufficient evidence  
25 demonstrating that the inherent competitive nature of the



1 auction in light of the participation of the three bidders and  
2 in multiple rounds of bidding established a fairly robust  
3 auction process competitive that did not present any evidence  
4 of collusion or tampering of the bidding and the auction  
5 process itself.

6           The testimony that has been induced for the support  
7 that while there are relationships between the ultimate bidder  
8 and the backup bidder, including Dr. Seal, those relationships  
9 do not rise to the point of casting any hesitancy, lull, or  
10 doubt on the good faith basis of the bidding that took place.  
11 And as Mr. Lehnert has indicated, the requirements are a  
12 purchaser, we have the purchaser; the value, we certainly have  
13 value. The question is good faith.

14           There being no opposition of good faith and the  
15 declarations and testimony submitted indicating that it was a  
16 fair auction, bidding was robust and not hampered by any fraud  
17 or collusion, the Court will grant the 363 good faith  
18 determinations to both the purchaser and the backup purchaser.  
19 I will ask that that be included within the order approving the  
20 sale.

21           Now, after the Court's ruling on that matter -- and  
22 so let's then start where we kind of began with your concerns  
23 about the actual language in the order approving sale, and  
24 specifically you're referencing the five days after the order  
25 becomes non-appealable and whether if it had to be that



1 language or a final non-appealable order.

2 MR. LEHNERS: Well, Your Honor, the problem we found  
3 ourselves wrestling with is mentioned before. I did draw up a  
4 draft order and circulate it. But everybody pretty much wanted  
5 to wait until after this hearing, which is fine. But at least  
6 they have an idea of where my thoughts are going.

7 The order -- the offer says final non-appealable  
8 order. The way I see it, a non-appealable order would be like  
9 a non-final order. You can't appeal it. The order's been  
10 entered, but you can't appeal it. Here we have something of a  
11 different color. You have an order that is entered. You have  
12 an order that is final as to all parties. You have an order  
13 that is appealable. It's just that there is a deadline on when  
14 to appeal it.

15 So payment would be due after the appeal period  
16 expires, assuming there are no appeals, which would be 14 days,  
17 plus the 5 days to pay. That's how we got it to 19 days.

18 So what Mr. Burke suggested, and I agreed, is we put  
19 in there that Empire Capital Management shall pay the purchase  
20 price within five business days of the bankruptcy court  
21 entering a final -- I'm sorry -- within five business days  
22 of -- I think I have it -- and I'm trying to go through the  
23 redlines, but the intent is the time period starts after the  
24 Court enters a final order that has not been appealed, five  
25 days after that. So that would be the time period to start



1 running on Day 15 and end on Day 19.

2 THE COURT: All right. And that language has been  
3 objected to?

4 MR. LEHNERS: Well, it hasn't been objected to.  
5 Mr. Bubala did basically put a redline in so it matches the  
6 asset agreement term sheet, because that's what the term was.  
7 Mr. Bubala said they put the term in that was there. But it  
8 kind of causes a bit of a disconnect between a non-appealable  
9 order versus an order that can no longer be appealed. It's  
10 two -- it's apples and oranges, sir.

11 THE COURT: I understand that. The parties can  
12 figure out their own language and we'll talk about that. But  
13 the clear intent, and what the Court will enforce is that is a  
14 final order, if that term is used within the appellate  
15 construct, that has become non-appealable.

16 MR. LEHNERS: Become (indiscernible).

17 THE COURT: And to be clear, the common definition  
18 "that has become non-appealable" is the expiration of the  
19 14-day period under the Rule 8000 series. And so there's  
20 always wiggle, there's always creative arguments. But that is  
21 the concept. The 19 days is clearly an indication of that  
22 concept, and that is what the Court is going to enforce,  
23 however that is ultimately written up as the meaning of the  
24 parties. I don't know if that helps, Mr. Lehnerns, or not.

25 MR. LEHNERS: No, it does. It does. Look, every



1 change Mr. Bubala made, I appreciated it.

2 THE COURT: Sure.

3 MR. LEHNERS: I'm going to make the changes. I'm  
4 grateful to him for making the changes. It was just that I saw  
5 kind of a disconnect, and there is a very good point that he  
6 made, and that's why I wanted to bring it to the Court.

7 THE COURT: Sure. And I agree that the language can  
8 get -- you can trip over your own feet with the language  
9 regarded non-appealable final order for this. But it's why  
10 it's helpful that we went over the 19 days. That clarifies  
11 whatever meaning the parties have in my mind so --

12 MS. TIRRE: Your Honor, may I be heard on this  
13 question? This is Amy Tirre.

14 THE COURT: Go ahead.

15 MS. TIRRE: Your Honor, I just want to clarify for the  
16 record, I believe Mr. Lehnerns stated Empire Capital Management,  
17 LLC. But that's inaccurate, because they stated in the notice  
18 of appearance and I believe at the hearing itself, my client,  
19 the principal, is Element Global, Inc., and that's the party  
20 that will be purchasing the asset. That should be identified  
21 as the buyer in the sale order.

22 And I have not yet weighed in on the sale order. I  
23 was waiting for today's hearing, and I will be providing my  
24 comments to Mr. Lehnerns. But I just wanted to make the record  
25 clear as to who the purchaser is.



1 And with respect to this 19-day question, based upon  
2 the exchange at the hearing on the 5th of April, I have stated  
3 to my client, Element Global, Inc., that it would have 19 days  
4 from the date of the entry of the sale order to make that  
5 \$2.5 million payment to the trustee. And I'm informed that I  
6 will be getting the funds to my client trust account, and then  
7 I would be able to, you know, wire them to the trustee, you  
8 know, on the day -- you know, the appropriate date.

9 THE COURT: Yeah.

10 MR. LEHNERS: And Ms. Tirre, that's Empire -- or  
11 Element Global, Inc., not Empire Capital Management, true?

12 MS. TIRRE: That's correct. Element Global, Inc. is  
13 the principal and the buyer. Empire Capital Management, LLC,  
14 was only the agent through which I originally, you know, was  
15 working. But obviously Element became the successful bidder.  
16 It's the principal.

17 THE COURT: I appreciate you clarifying that.  
18 Because that was -- I had noted that as a question. My  
19 understanding is that Element Global, Inc. was the entity  
20 approved as the final successful purchaser.

21 MS. TIRRE: Thank you.

22 THE COURT: All right.

23 MR. LEHNERS: Element Global, Inc. They are the  
24 buyer. Okay. I fixed that.

25 THE COURT: All right. Mr. Lehnerns, did you have any



1 other concerns that you wanted to raise regarding the mechanics  
2 of the order approving the sale?

3 MR. LEHNERS: Well, Judge, like I said, I sent that  
4 out last Tuesday. I'm going to ask Mr. Bubala to send me a  
5 clean version of his redline, and then I can add that one part,  
6 and just send it out to everybody else so they can comment, and  
7 we should get an order uploaded for you as fast as we can.

8 THE COURT: Yeah. Yeah, and fortunately, I'm not  
9 heading anywhere for a while, so I will be here and looking for  
10 the proposed order.

11 MR. LEHNERS: Thank you, Your Honor.

12 MS. TIRRE: Thank you.

13 THE COURT: Anything else any other party wishes to  
14 bring up in either the main case or the adversary related to  
15 the sale and the determination of good faith under 363(m)?

16 All right. Then, thank you very much. I appreciate  
17 the efforts. I'm glad we were able to get this concluded.  
18 I'll look forward to receiving the proposed order. But that  
19 will conclude the hearing for today and we'll be adjourned.

20 MR. LEHNERS: Thank you, Your Honor.

21 MS. TIRRE: Thank you.

22 MS. OSTROW: Thank you, Your Honor.

23 MS. FLETCHER: Thank you, Your Honor.

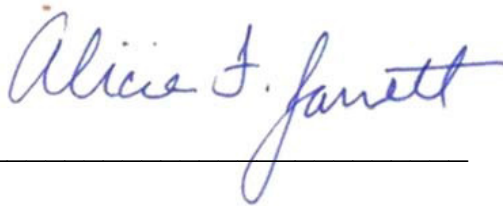
24 MR. OINES: Thank you, Your Honor.

25 (Proceedings concluded at 12:31 p.m.)



C E R T I F I C A T I O N

I, Alicia Jarrett, court-approved transcriber, hereby  
certify that the foregoing is a correct transcript from the  
official electronic sound recording of the proceedings in the  
above-entitled matter.



ALICIA JARRETT, AAERT NO. 428

DATE: May 18, 2023

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